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Supreme Court, U.S.
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In the

Supreme Court of the United States

FRANK ADAMS & CO., ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Defendants,

and

BALTIMORE & OHIO RAILROAD CO., ET AL.,
Intervening Defendants.

On Appeal from the United States District Court for the Southern District of Ohio, Western Division

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JURISDICTIONAL STATEMENT

HOWARD GOULD and
DAVID REICHERT
1106 Carew Tower
Cincinnati 2, Ohio
Attorneys for Appellants

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October Term, 1963

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On Appeal from the United States District Court for the Southern District of Ohio, Western Division

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JURISDICTIONAL STATEMENT

Appellants appeal from the order of the three-judge United States District Court for the Southern District of Ohio, Western Division, dismissing appellants' complaint to set aside and enjoin an order of the Interstate Commerce Commission, and submit this statement to show that the

Supreme Court of the United States has jurisdiction of the appeal, and that substantial issues of great importance are presented.

OPINION BELOW

The decision of the three-judge District Court is not yet reported. Copies of the opinion and order of the District Court are attached hereto as Appendices A and B respectively. The April 2, 1962 decision of the Interstate Commerce Commission is reported at 316 I.C.C. 55.

JURISDICTION

Appellants filed a complaint on June 25, 1962, pursuant to Title 28, United States Code, Sections 1336, 1398, 2284 and 2321 through 2325, to set aside and enjoin an order of the Interstate Commerce Commission. The opinion and order of the District Court was entered May 8, 1963. Notice of appeal was filed in that Court on July 1, 1963, and on August 12, 1963, Judge John W. Peck of that Court granted an extension of time in which to docket this appeal to the Supreme Court to and including September 30, 1963.

The Supreme Court has jurisdiction to review the decision of the three-judge District Court by direct appeal by virtue of Title 28, United States Code, Sections 1253 and 2101(b) and Title 49, United States Code, Section 45. The following cases sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Interstate Commerce Commission, et al* v. *City of Jersey City, et al*, 322 U. S. 503; *Interstate Commerce Commission, et al* v. *Hoboken Manufacturers' Railroad Co.*, 320 U. S. 368, rehearing denied, 321 U. S. 801; *Alton Railroad Co.* v. *United States, et al*, 287 U. S. 229, and *Baltimore & Ohio Railroad Co., et al* v. *United States, et al*, 298 U. S. 349.

QUESTIONS PRESENTED

1. Are rates on scrap iron in Eastern Territory unreasonable in violation of Section 1(4) and (5) of the Interstate Commerce Act; unduly preferential to iron ore and unduly prejudicial to scrap iron, in violation of Section 3(1) of the Interstate Commerce Act; and contrary to rate-making prescriptions established and maintained by the Interstate Commerce Commission for thirty-four years?

2. Did the hearing examiner in the proceedings before the Interstate Commerce Commission err in restricting the appellants from cross-examining witnesses appearing voluntarily on behalf of certain interveners, on the ground that said interveners' witnesses could plead that the testimony sought to be elicited on cross-examination was confidential information?

3. Were certain admitted errors committed by the Interstate Commerce Commission in the proceedings before the Commission and in the United States District Court so prejudicial and material as to prevent the Commission from forming a rational basis for its ultimate conclusions; or were such admitted errors so flagrant and irresponsibly repeated after having been cited to the Commission by the appellants as to indicate that the Commission's decision was arbitrary and unreasonable, that the appellants did not receive a fair hearing, and were denied due process of law?

STATUTES INVOLVED

The statutes involved in this case, Sections 1(4) and (5) and 3(1) of the Interstate Commerce Act, as amended, [49 United States Code, Sections 1(4), (5) and 3(1)], and Section 7(c) of the Administrative Procedure Act [5 United States Code, Section1006(c)] are set forth in Appendix C attached hereto.

STATEMENT

This litigation involves an attack by the scrap iron and scrap steel industry against the freight rate structure maintained by the Class I railroads in Eastern Territory on scrap iron and scrap steel (hereinafter referred to as "scrap").

The 360 appellants, listed in Appendix D herein, constitute the major processers and shippers of scrap in Eastern Territory. ("Eastern Territory" or "Official Territory", as it is also termed, generally includes the area east of the Mississippi River and north of the Ohio and Potomac Rivers.)

Appellant, Institute of Scrap Iron & Steel, Inc., is the national trade association of the scrap industry, comprised of approximately 1,100 of the leading processers and shippers of scrap in the United States.

The 360 individual appellants purchase unprepared scrap having no commercial value, which they process and refine for sale to steel mills and foundries to be remelted into new steel. Each steel producer also generates its own scrap as a by-product of manufacturing new steel. Scrap generated by steel producers is referred to in the trade as "home scrap", while scrap sold to steel producers by the appellants is referred to as "purchased" or "dealer" scrap. Of the total scrap consumed, approximately one-half is dealer scrap.

The only other metallic raw material used to manufacture new steel is smelted iron ore, known commonly in its molten state as "hot metal" and in its solid state as "pig iron". Generally, one ton of scrap (either dealer, home, or mixed) is consumed for every two tons of new steel produced. Dealer scrap is shipped both in its unprepared condition to scrap dealers and in its processed condition to steel producers, primarily by rail and to a lesser, but increasing, extent by truck, barge and lake steamer. Iron ore is shipped solely by rail and water transportation.

The scrap industry is extremely important to the national economy and vital to the national defense in times of war or national emergency. In 1956, 35,109,000 gross tons of dealer scrap were consumed in the United States. The average price of the prime scrap grade, No. 1 Heavy Melting Steel, was $53.82 per gross ton. By 1960, only 23,567,000 gross tons of dealer scrap were consumed in the United States, and the price of No. 1 Heavy Melting Steel Scrap had dropped to an average of $32.82 per gross ton.

No. 1 Heavy Melting Steel Scrap constitutes 30% of all dealer scrap consumed and is sold in far greater quantity than any other scrap grade. Thus, the loss of revenue to the scrap industry from the sale of No. 1 Heavy Melting Steel Scrap alone in 1960, as compared to 1956, was $334,829,232.

Scrap is one of the most profitable commodities hauled by the railroads. For example, during the period of 1955 through 1959, an average of 16,015,700 net tons of scrap were shipped annually in Eastern Territory, yielding revenues to the railroads of $57,543,920 per year.

Following World War II, the railroads of the United States imposed a series of rate increases on scrap amounting to 142.2% by 1958. During the same period, iron ore rates were increased only 68.8%. The eastern railroads, defendants before the Interstate Commerce Commission, admitted that iron ore had received favored treatment in general rate increase cases, that iron ore rates were very low, and that the combined percentage increases of iron ore rates were less than on any other commodity.

The effect of high scrap rates and subnormal iron ore rates was that steel producers, as a substitute for scrap, consumed an increased percentage of pig iron and hot metal smelted from iron ore. Thus, in 1960, scrap prices fell below their 1947 average, and consumption ebbed to 1941 levels.

In addition, the import of iron ore from foreign mines, owned or controlled by the domestic integrated steel mills, moving inland by rail on subnormal rates, mushroomed in 1959, while scrap processers were unable to ship to historic markets because of the barrier created by freight rates.

In 1958, the scrap industry appealed for relief to the railroads, and in every territory throughout the United States, excepting Eastern Territory, namely, Southern, Southwestern, Western Trunk Line, Illinois Freight Association and Mountain-Pacific, rate adjustments were made.

However, the Eastern Territory railroads adamantly refused to grant relief, and on August 15, 1960, appellants filed their complaint with the Interstate Commerce Commission against the forty-nine Class I Eastern Territory Railroads[1] attacking scrap rates in Eastern Territory as being unreasonable in violation of Section 1(4) and (5) of the Interstate Commerce Act, and prejudicial to scrap and

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[1] Akron, Canton & Youngstown R. R.
Ann Arbor R. R.
Baltimore & Ohio R. R.
Bangor & Aroostook R. R.
Bessemer & Lake Erie R. R.
Boston & Maine R. R.
Canadian Pacific Lines in Maine
Central R. R. Co. of New Jersey, The
Central Vermont Ry., Inc.
Chesapeake & Ohio Ry.
Chicago & Eastern Illinois R. R.
Chicago & Illinois Midland Ry.
Chicago, Milwaukee, St. Paul & Pacific R. R.
Delaware & Hudson R. R.
Delaware, Lackawanna & Western R. R.
Detroit & Toledo Shore Line R. R.
Detroit, Toledo & Ironton R. R.
Elgin, Joliet & Eastern Ry.
Erie R. R.
Grand Trunk Western R. R.
Green Bay & Western R. R.
Illinois Central R. R.
Illinois Terminal R. R.
Lehigh & Hudson River Ry.
Lehigh & New England R. R.
Lehigh Valley R. R.
Long Island R. R.
Maine Central R. R.
Missouri-Illinois R. R.
Monon R. R.
Monongahela Ry.
New York Central R. R.
New York, Chicago & St. Louis R. R.
New York Connecting R. R.
New York, New Haven & Hartford R. R.
New York, Susquehanna & Western R. R.
Norfolk & Western Ry.
Pennsylvania R. R.
Pennsylvania-Reading Seashore Lines
Pittsburgh & Lake Erie R. R.
Pittsburgh & West Virginia Ry.
Reading Company
Richmond, Fredericksburg & Potomac R. R.
Rutland Ry. Corp.
Staten Island Rapid Transit Ry.
Toledo, Peoria and Western R. R.
Virginian Ry.
Wabash R. R.
Western Maryland Ry.

preferential to iron ore, in violation of Section 3(1) of the Interstate Commerce Act.

As relief, the complaint sought a revision of scrap rates as follows:

1. That the prevailing 80,000 pound scrap rates be no more than 70% of the prevailing 80,000 pound rates on manufactured iron and steel articles;

2. That the heavier loading characteristics of scrap be acknowledged by the establishment of a new scale of rates at 100,000 pounds to be 50% of the prevailing 80,000 pound manufactured iron and steel rates;

3. That scrap rates be no more than 150% of the prevailing iron ore rates; and

4. That scrap rates be no more than 70% of the prevailing pig iron rates.

Eleven integrated steel mills[2] intervened to protect the subnormal iron ore rates. (Integrated steel mills have facilities for smelting iron ore into hot metal or pig iron, as contrasted with nonintegrated steel mills and foundries which have no such facilities, but depend entirely upon pig iron and/or scrap for remelting purposes.) Two nonintegrated steel mills intervened in support of the complaint.[3] The intervening integrated steel mills made no attempt to justify the present scrap rates, and in some instances, admitted in direct testimony that scrap rates were too high.

Pursuant to special rules of procedure, direct testimony was submitted in the form of written verified statements. Oral cross-examination of the appellants' witnesses was waived by the railroads and the interveners. The two

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[2] United States Steel Corp., Inland Steel Corp., Bethlehem Steel Co., Pittsburgh Steel Co., Youngstown Sheet & Tube Co., Jones & Laughlin Steel Corp., Weirton Steel Co., Division of National Steel Corp., Republic Steel Corp., Wheeling Steel Corp., Armco Steel Corp. and Laclede Steel Co.

[3] Green River Steel Corporation and Northwestern Steel and Wire Company.

witnesses appearing on behalf of the defendant railroads were cross-examined in full.

But when the witnesses appearing voluntarily on behalf of the intervening integrated steel mills were cross-examined on the specific data and practices of their mill pertaining to scrap, iron ore and traffic conditions, they refused to answer the questions, pleading confidential information. (One witness actually withdrew his verified statement rather than submit to cross-examination.) The hearing examiner upheld the right of the witnesses to plead confidential information, and denied appellants the right to question the interveners' witnesses concerning facts, figures and statistics of their individual mills.

On August 29, 1961, following the oral hearing and submission of briefs, the examiner issued his report and order recommending that the complaint be dismissed. His report and order contained forty errors, all of which were enumerated in exceptions filed by the appellants with the Commission on October 9, 1961.

The Interstate Commerce Commission adopted the recommended report and order in its decision of April 2, 1962, 316 I.C.C. 55, and repeated the examiner's errors. It held that scrap rates were not unreasonable and that there was no justification for relating scrap rates to rates on manufactured iron and steel, pig iron, or iron ore, a finding directly contrary to the Commission's decision in *Newport News Shipbuilding & Drydock Co.* v. *B. & O. R. Co.*, 160 I.C.C. 620, to which further reference will be made.

However, in the appeal proceedings in the United States District Court, the Commission admitted that several errors had been committed, but alleged they were typographical.

Appellants' complaint to the District Court was dismissed. The summary *Per Curiam* decision failed to rectify the errors admitted by the Commission, and upheld

the hearing examiner's ruling that the voluntary steel mill witnesses could plead confidential information in refusing to answer questions on cross-examination.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents important issues of substance and procedure. Of great substantive importance to the scrap industry is the uncertainty in the scrap rate structure created by the District Court and the Interstate Commerce Commission in disregarding the prescription for establishing scrap rates and awarding reperations, previously followed by the Commission for thirty-four years in more than forty cases. Of procedural importance to the administration of the Interstate Commerce Commission and interpretation of the Administrative Procedure Act is the precedent approved by the District Court of permitting volunteer witnesses to plead confidential information to prevent their being cross-examined in an administrative proceeding.

ARGUMENT

1. The Scrap Rate Structure Becomes Chaotic by the Abrogation of the Newport News Formula

On December 31, 1929 the Interstate Commerce Commission, in *Newport News Shipbuilding and Drydock Co. v. B. & O. R. Co.*, 160 I.C.C. 620, announced a prescription for scrap rates:

> "In 17,000, Part 6, *Iron and Steel Articles*, 155 I.C.C. 517, decided June 7, 1929, a distance scale of rates was prescribed for the future on iron and steel articles in Official Territory. On this record we are convinced that rates made 70% of those prescribed in Appendix F of that case affords a fair basis upon which to construct rates on scrap for the future from and to the points here considered."

> "We further find . . . the (scrap) rates assailed are and for the future will be unreasonable to the extent that they exceed or may exceed rates per ton of 2,240 pounds made on the basis of 70% of the basic scale of rates prescribed in *Iron and Steel Articles, supra*, as set forth in Appendix F thereto, applied in the manner therein indicated."

The 70-percent formula of the *Newport News* case, *supra*, was a direct outgrowth of a 1927 decision in which the Commission found a chaotic scrap rate structure:

> "Complainants' comparisons, considered alone, indicate that the rate charged was excessive, while defendants' comparisons, considered in the same way, establish the reasonableness of the rate assailed. As a whole the record definitely establishes little except the lack of a recognized rate level on scrap iron in this territory and the resultant possibility of selecting rates tending to overthrow or support other rates in comparison, according to the purpose sought." *West Virginia Rail Co.* v. *B. & O. R.R. Co.*, 136 I.C.C. 303 (1927).

For the past thirty-four years the Commission has adhered to the 70-percent rule despite more than forty cases brought by the railroads in a futile attempt to destroy the doctrine. For example, in 1952, the Commission stated:

> "In over forty proceedings the 70-percent basis has been prescribed by this Commission for application on scrap between points in Official Territory. They embrace a period of more than twenty years, beginning with *Newport News Shipbuilding and Drydock Co.* v. *B. & O. R. Co.*, 160 I.C.C. 620, decided in December 31, 1929. Since then that basis has been prescribed for application on scrap between numerous points in Official Territory in decisions many of which are cited in *Midvale Co.* v. *Wheeling & L. E. Ry. Co.*,

231 I.C.C. 734, 736. In the earlier proceedings reparation generally was not awarded to the 70-percent basis. However, on reconsideration in *Midvale Co.* v. *Wheeling & L. E. Ry. Co., supra*, decided on March 7, 1939, the Commission said, at page 737:

" 'In most of the other proceedings referred to above, reparation was awarded only to the basis of the sixth-class rates, but when we have so clearly indicated that in our opinion rates in excess of the 70-percent basis in Official Territory are unreasonable, carriers should not be permitted to refuse to adjust their rates to that basis until they are ordered to do so, and then escape payment of reparation when a complaint is filed.'

"Thereafter, reparation was awarded to the 70-percent basis in numerous proceedings." *Newport News Shipbuilding and Drydock Company* v. *Chesapeake & Ohio Railroad Co.*, 284 I.C.C. 409 (1952).[4]

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[4] The following is a partial list of the cases in which the 70-percent basis has been upheld: *Continental Steel Corp.* v. *Akron, C. & Y. Ry. Co.*, 168 I.C.C. 371 (1930); *Friedman Co.* v. *C. & O. Ry. Co.*, 174 I.C.C. 273 (1931); *Abrahams & Co.* v. *Chesapeake & O. Ry. Co.*, 177 I.C.C. 525 (1931); *Klotz Bros.* v. *Chesapeake & O. Ry. Co.*, 177 I.C.C. 557 (1931); *Mansback Scrap Iron Co.* v. *Chesapeake & O. Ry. Co.*, 178 I.C.C. 234 (1931); *American Scrap Material Co.* v. *Atlantic & Y. Ry. Co.*, 191 I.C.C. 45 (1933); *Scrap Iron from Lynchburg, Va. to Pittsburgh, Pa.*, 194 I.C.C. 200 (1933); *Caplan* v. *Pennsylvania R. Co.*, 200 I.C.C. 530 (1934); *Hausman & Wimmer* v. *Ann Arbor R. Co.*, 208 I.C.C. 438 (1935); *Joseph Schonthal Co.* v. *Central R. Co. of New Jersey*, 208 I.C.C. 543 (1935); *Ingersoll Steel & Disc Co.* v. *Pennsylvania R. Co.*, 209 I.C.C. 109 (1935); *Scrap Iron from Shelby, Ohio to Pittsburgh*, 209 I.C.C. 145 (1935); *I. Berman & Son* v. *Chesapeake & O. Ry. Co.*, 210 I.C.C. 356 (1935); *Summer & Co.* v. *Pennsylvania R. Co.*, 225 I.C.C. 513 (1937); *Midvale Co.* v. *Wheeling & L. E. Ry. Co.*, 231 I.C.C. 734 (1939); *Traffic Bureau, Lynchburg C. of C.* v. *B. & O. R. Co.*, 235 I.C.C. 139 (1939); *Platnick Bros., Inc.* v. *B. & O. R. Co.*, 238 I.C.C. 218 (1940); *Traffic Bureau, Lynchburg C. of C.* v. *Aberdeen & R.R. Co.*, 245 I.C.C. 49 (1941); *L. Berman & Son* v. *C. & O. R. Co.*, 246 I.C.C. 101 (1941); *Kasle Iron & Metal Co.* v. *Wheeling & L. E. R. Co.*, 251 I.C.C. 544 (1942); *Summer & Co.* v. *Erie R. Co.*, 255 I.C.C. 475 (1943); *M. Glosser & Sons* v. *Pennsylvania R. Co.*, 256 I.C.C. 579 (1943); *National Forge & Ordnance Co.* v. *Pennsylvania R. Co.*, 256 I.C.C. 744 (1944); *M. N. Landay Co.* v. *Pennsylvania R. Co.*, 258 I.C.C. 287 (1944); *Coeburn Produce Co.* v. *N. & W. R. Co.*, 258 I.C.C. 529 (1944); *Vulcan Mold & Iron Co.* v. *B. & O. R. Co.*, 259 I.C.C. 138 (1944); *National Radiator Co.* v. *Long Island R. Co.*, 259 I.C.C. 143 (1944); *Summer & Co.* v. *N. Y. C. R. Co.*, 262 I.C.C. 43 (1945); *Vulcan Mold & Iron Co.* v. *B & O. R. Co.*, 262 I.C.C. 384 (1945); *Summer & Co.* v. *Erie R. Co*, 262 I.C.C. 377 (1945); *Empire Steel Corp.* v. *Pennsylvania R. Co.*, 263 I.C.C. 664 (1945); *American Steel Abrasives Co.* v. *Ann*

In 1929, manufactured iron and steel moved on 40,000 pound rates and scrap on 44,800 pound rates. Subsequently, alternating 80,000 pound rate scales were established on both commodities, and since 1954, when the 80,000 pound scrap rates became effective, virtually all scrap has moved on the higher minimum.

However, the 70-percent rule of the *Newport News* case, *supra*, applies only to the 44,800 pound scrap rates. Thus, part of the relief sought in the instant case was the extension of the *Newport News* formula to the 80,000 pound scrap rates.

The underlying rationale of the 70-percent basis was expressed in *Coeburn Produce Co.* v. *N. & W. R. Co.*, 258 I.C.C. 529 (1944):

> "We know that scrap iron is a low-grade commodity, requires no special treatment for its rail transportation, nor expedited service, loads heavily — as illustrated by the average load of the shipments in question, 76,133 pounds, which was 31,333 pounds above the applicable minimum carload weight of 44,800 pounds and, since it is hardly subject to damage in transit, involves little or no risk to the carriers in its movement."

This Court has endorsed the rate making principle that rates on raw materials should be lower than those established on the manufactured products:

> "A lower rate properly may be applied to a product when in an unfinished condition than that applicable

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Arbor R. Co., 269 I.C.C. 607 (1948); *Hockensmith Corp.* v. *Delaware & H. R. Corp.*, 270 I.C.C. 504 (1948); *Empire Steel Corp.* v. *B. & O. R. Co.*, 272 I.C.C. 669 (1948); *Empire Steel Corp.* v. *B. & O. R. Co.*, 272 I.C.C. 594 (1948); *Empire Steel Corp.* v. *B. & O. R. Co.*, 281 I.C.C. 512 (1941); *Newport News Shipbuilding and Drydock Co.* v. *C. & O. R. Co.*, 284 I.C.C. 409 (1952); *Dayton Steel Foundry* v. *B. & O. R. Co.*, 288 I.C.C. 751 (1953); *Ashland Malleable Iron Co.* v. *C. & O. R. Co.*, 289 I.C.C. 191 (1953); *Farrell Check Steel Co.* v. *N. Y. C. R. Co.*, 292 I.C.C. 288 (1954); *Jessop Steel Co.* v. *Pennsylvania R. Co.*, 296 I.C.C. 339 (1955); *Continental Foundry & Machine Co.* v. *B. & O. R. Co.*, 296 I.C.C. 418 (1955).

> to it when finished. In *National Refining Company* v. *M. K. & T. Ry.* (1912) 23 I.C.C. 527, it was held that rates applicable to refined oil were excessive when applied to carload shipments of the so-called lighter ends of petroleum which had been separated from crude oil by a skimming process, — that is, by distillation sufficient to take off the more highly volatile elements, — but which was useless for commercial purposes until a further process of refinement had been undergone." *United States* v. *Gulf Refining Company*, 268 U.S. 542 (1925).

In dismissing the appellants' complaint in the instant case, the Commission found: "Moreover, there is no justification from a transportation standpoint for requiring a rigid relationship between the rates on scrap and the rates on any of these other (manufactured iron and steel, pig iron and iron ore) commodities." 316 I.C.C. at page 67.

If scrap rates are not to be related to rates on manufactured iron and steel, pig iron and iron ore, what then is to be the measuring gauge? Thirty-four years ago the Commission commented in the *Newport News* case, *supra*:

> "The present adjustment of rates on scrap in official territory is so replete with inconsistencies that it is possible by judicious selection of comparative rates to support almost any conclusion which may be desired. This chaotic condition was commented upon in *West Virginia Rail Co.* v. *B. & O. R.R. Co.*, 136 I.C.C. 303, 306. Apparently distance has not entered to any great extent into the establishment of these rates, and the situation is further confused by the fact that the majority of them apply to groups of undisclosed extent, thus making difficult any intelligent comparison on a distance basis."

The decisions of the District Court and the Interstate Commerce Commission in this case revert the scrap rate structure to the confused and disorderly condition that

existed during the 1927-1929 era. Their decisions are contrary to the time-tested 70-percent prescription which the railroads' chief witness in the proceedings before the Commission admitted was a reasonable maximum level for scrap rates and would be granted to shippers applying by postcard. (Cross-examination, E. W. Himmert, pages 54 and 70).

2. Confidential Information is an Improper Shield for Cross-examination.

Appellants' complaint before the Interstate Commerce Commission did not attack the iron ore rate structure. However, part of the relief sought was to reduce scrap rates to a level of 150% of the iron ore rates. Scrap iron rates are presently 300% to 400% of the iron ore rates. This economic travesty is fostered by joint cooperation in rate-making of the eleven integrated steel mills and the Eastern railroads, defendants below.

Reduced scrap rates would minimize the preference enjoyed by the integrated steel mills in receiving their raw material (iron ore) at subnormal rates while nonintegrated steel mills were receiving their raw material (scrap) at excessive rates.

The integrated steel mills dominated the defense before the Commission with seven witnesses while only two witnesses appeared for the forty-nine defendant railroads.

The context of the testimony of the seven steel mill witnesses was two-fold: (1) general statistics taken from the entire steel industry throughout the United States, and (2) references to specific data, procedures, melt practices, and traffic movements of the steel mills represented by the witnesses.

Appellants objected to the introduction into evidence of generalized statistics as being irrelevant and immaterial as to conditions on scrap in Eastern Territory. Appellants

proved that the movement and consumption of scrap outside Eastern Territory had been stimulated by freight rate reductions and that the use of generalized statistics as probative evidence of scrap conditions within Eastern Territory presented an unfair, distorted picture.

However, the hearing examiner overruled the objections. When appellants attempted to cross-examine the steel mill witnesses on individual statistics, data and transportation conditions relating to scrap in each witness's mill in order to challenge the impression that conditions prevailing outside Eastern Territory were the same as those within Eastern Territory, the hearing examiner refused to permit the questions, ruling that the witnesses could plead confidential information (Cross Examination of John C. Howard, Tr. p. 243.)

The Commission then chose to reject the concrete testimony of the appellants' 16 witnesses as to conditions on scrap within Eastern Territory, and based its ultimate findings on the generalized steel mill statistics which had been admitted into evidence unchallenged by cross-examination.

Appellants submit that the action of the hearing examiner and the Commission violated the rudimentary precepts of judicature, and confiscated the appellants' constitutional rights to due process of law.

The District Court avoided the issue of whether a witness being cross-examined could refuse to answer questions on the ground that the questions sought confidential information. The court gave two untenable reasons for upholding the Commission: (1) that the appellants did not recall the witnesses on direct examination and make proffers, and (2) that cross-examination could not have produced testimony inconsistent with the Commission's findings.

As to the first reason that the appellants did not recall the witnesses on direct examination and make proffers, if

the questions were improper under the liberal rules of cross-examination, *a fortiori* they would be more improper under the restrictive rules of direct examination. At best, proffers would have been generalized, since obviously the appellants had no access to the statistics and data of the individual mills. Aside from this point, the appellants were entitled as a matter of right to interrogate the hostile witnesses on cross-examination rather than be put to the disadvantage of presenting their case through unpersuasive proffers.

As to the second reason that the cross-examination could not have produced testimony inconsistent with the Commission's findings, how could the court presume to know the substance of the testimony when the door of inquiry was closed to the appellants?

The District Court's ruling was directly contrary to law and it denied due process of law. The rules governing cross-examination in complaint proceedings before the Interstate Commerce Commission are definitively set forth in the Administrative Procedure Act and the General Rules of Practice of the Interstate Commerce Commission. Section 7(c) of the Administrative Procedure Act, 5 United States Code, Section 1006 (c) provides:

> "Every party shall have the right . . . to conduct such cross-examination as may be required for a full and true disclosure of the facts."

Rule 1.75 of the General Rules of Practice of the Interstate Commerce Commission states that "the rules in evidence governing proceedings in matters not involving trial by jury in the courts of the United States" shall govern, and Rule 1.77 guarantees "the right of cross-examination of the witnesses." (Rules 1.75 and 1.77 are set forth in full in Appendix E attached hereto.)

The District Court's ruling establishes a precedent disregarding the Constitutional rights guaranteed to litigants

by this Court in administrative proceedings. Justice Cardoza stated in *Ohio Bell Tel. Co.* v. *Public Commission of Ohio*, 301 U.S. 292:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. *West Ohio Gas Co.* v. *Public Utilities Comm'n* (No. 1), *supra*, p. 70; *West Ohio Gas Co.* v. *Public Utilities Comm'n* (No. 2) 294 U.S. 79; *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U.S. 287, 304. Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' (*St. Joseph Stockyards Co.* v. *United States*, 298 U.S. 38, 73) of a fair and open hearing be maintained in its integrity. *Morgan* v. *United States*, 298 U.S. 468, 480, 481; *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, *supra*. The right to such a hearing is one of 'the rudiments of fair play' (*Chicago M. & St. P. Ry. Co.* v. *Polt*, 232 U.S. 165, 168) assured to every litigant by the Fourteenth Amendment as a minimal requirement. *West Ohio Gas Co.* v. *Public Utilities Comm'n* (No. 1), (No. 2), *supra*; *Brinkerhoff-Faris Co.* v. *Hill*, 281 U.S. 673, 682. *Cf. Norwegian Nitrogen Co.* v. *United States*, *supra*. There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

3. The Commission's Errors Were Material

In the proceedings before the Interstate Commerce Commission, appellants filed exceptions enumerating forty

errors in the report of the hearing examiner. Most of these errors were repeated by the Commission in its decision of April 2, 1962 and these errors became the basis for appellants' complaint in the District Court. In their answers filed in the District Court, the defendant, Interstate Commerce Commission, and the intervening defendant railroads admitted that the Commission's decision did in fact contain several errors which they alleged were typographical. The following are two examples of major errors:

A. The first full paragraph of page 60 of the Commission's report states: "In 1929, new steel sold for about $50.00 per ton and scrap a third less". (Scrap sold for two-thirds less.) "Today, the premium grade of scrap sells for under $90.00 per gross ton while new steel generally averages between $120.00 and $150.00". (The premium grade of scrap sells for under $30.00 per gross ton and not $90.00.) If scrap selling at $90.00 per ton (as the Commission erroneously believed) suffered no market disadvantage, can it be denied that scrap selling at $30.00 per ton was at a severe disadvantage? Related in terms of percentages using the Bureau of Labor Statistics price index for July, 1960, based on the 1947-1949 averages equalling 100, scrap was 88 or down 12%, iron ore was 169.7 or up 69.7% and pig iron was 162.5 or up 62.5%.

B. Page 67 of the Commission's decision states in the second full paragraph: "As noted, the transportation characteristics of iron ore, pig iron, manufactured iron and steel, and scrap differ widely". The principal witness for the interveners, John C. Howard, Traffic Manager of Bethlehem Steel Corporation, testified on page 168 of the transcript: "Transportation conditions, I would say, are in no material way altered since 1929. Transportation of scrap is still handled in the same type of equipment, moves generally from most any origin in Official Territory to a limited number of destinations. I think it is much the same".

In addition, all the appellants' witnesses testified that transportation conditions involving scrap, as compared to iron ore and pig iron, were the same. How could the Commission arrive at a different conclusion when the opposing parties agreed on the transportation conditions? How could the Commission abandon the *Newport News* formula when the record was uncontroverted?

Moreover, the repetition by the Commission of what it later admitted were the hearing examiner's errors after their having been cited in appellants' exceptions, was indicative of the slipshod manner in which the Commission conducted the proceedings[5] and points to the conclusion that the appellants were denied a fair hearing because of the failure of the hearing examiner and the Commission to judiciously review the record. These admitted errors stand preserved as findings of fact in the Commission's official report of the case and unless corrected will be repeatedly cited as precedent in future proceedings because of the magnitude of this case.

CONCLUSION

This case brought by 361 appellants constituting the major shippers of scrap in Eastern Territory, seeks to obtain justice in rate making as was intended by Congress when it passed the Interstate Commerce Act. The judicial trail that shippers must follow is a narrow one fraught with procedural difficulties. By law a shipper may only attack a rate in the Interstate Commerce Commission where the responsibility of judicious review is delegated to a hearing examiner who in many cases has neither a conversant knowledge of the industry involved nor the freight rate structure applicable to that industry. However quasi-

[5] In the District Court proceeding, the Commission committed errors which the District Court found necessary to correct on its own motion in order to avoid "the entering of a final order for the plaintiffs (appellants) as a matter of law."

judicial may be the atmosphere in which the proceedings are conducted, it requires no stretch of the imagination to appreciate that primary education begins for appellants in orienting the examiner.

The railroads and intervening steel mills have acquired a sophisticated approach to handling matters before the Interstate Commerce Commission. There is close cooperation between the eastern railroads and the eastern steel mills. The uncontroverted testimony before the hearing examiner concedes that the steel mills recommend the rates for iron ore, pig iron, new steel and scrap and the railroads adopt the rates with neither investigation nor approval by shippers other than the steel mills themselves.

The shippers in the instant case could not initiate their complaint in the courts for redress of their grievance or to halt an obvious injustice. They were compelled to follow the strict Commission procedure of appealing from the hearing examiner to the Commission which in turn rubberstamped the examiner's report including the errors subsequently admitted. It is doubtful whether the Commission ever read the examiner's report, the appellants' exceptions, or the pleadings and briefs; otherwise how could the errors listed in the exceptions have gone unnoticed and uncorrected?

Due process of law must be zealously preserved in administrative proceedings. Arguing at a later date that it made no difference whether the right of cross-examination existed is hardly consonant with modern concepts of justice and fair play. The right to cross-examination is a right that exists at the time of trial and it cannot come in an adulterated form or by some kind of condensed package of presumption and inference. A trial before a hearing examiner is no less a trial than it is before a Federal judge or a Federal judge and jury. Due process of law cannot be circumvented by the restrictions imposed by a quasi-judicial

officer whose findings are sympathetically reviewed by his own superiors.

Appellants submit that had the steel mill witnesses been cross-examined on the facts, figures and statistics involving their individual mills, there would have been a wealth of testimony supporting the unreasonableness of the scrap rates, the discrimination being visited upon the scrap dealers and the unfair and prejudicial advantages being afforded to shippers of iron ore and pig iron. If the hearing examiner elected to shroud the true facts and figures from being exposed he mistakenly applied the theory of the Fifth Amendment in a civil proceeding involving voluntary witnesses appearing for interveners.

If the Congress in its wisdom granted to the Interstate Commerce Commission the rate-making review, power and authority, it also conveyed to the appellants the fundamental privileges and rights that any litigant has in the Federal Courts. Vast injury has been committed by reason of the compounded errors of the hearing examiner, the Interstate Commerce Commission and the District Court. An entire industry in fifteen states constituting approximately 75% of the nation's scrap iron shippers is in the course of being destroyed by the continuation of rate abuses sanctioned by the Court below and the Commission.

The eastern railroads are content to charge what the traffic will bear. The eleven intervening steel mills are only concerned with protecting existing rates on iron ore and pig iron. The appellants are fighting for their economic lives and they should have been granted relief or at least have been afforded an opportunity to present all of the facts and figures supporting their contentions.

Plenary review is sought herein by the appellants because the record of the case cries out for a different result than the affirmation of freight rates for scrap being three or four times that of iron ore. It is inconceivable that the

Commission and the three-judge District Court could have arrived at a conclusion that scrap rates should be higher for a waste commodity than rates on pig iron manufactured by steel mills.

If the eleven intervener steel mills wished to safeguard the sanctity and secrecy of the facts and figures surrounding their scrap shipments, they could have remained out of the case and not intervened. Once having voluntarily entered the case without reservation, they became subject to the same fundamental rules of trial procedure as did the appellants and defendant railroads.

If this case is not reversed, an industry employing several hundred thousand union laborers involving an investment of more than one-half billion dollars is threatened with extinction by a combination of railroads maintaining excessive scrap rates and integrated steel mills supporting these rates, which they are absolved from paying by reason of their utilization of iron ore moving on subnormal rates. The remainder of the nonintegrated steel mills and foundry industries together with the shippers of scrap become subordinated or extinguished by reason of an incomplete record.

We submit, therefore, that important questions are presented by this appeal involving matters of extreme public interest.

Respectfully submitted,

HOWARD GOULD

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DAVID REICHERT
1104 Carew Tower
Cincinnati 2, Ohio
Attorneys for Appellants

September 27, 1963

APPENDIX A

(CAPTION OMITTED)

OPINION

(Entered May 8, 1963.)

Before: WEICK, Circuit Judge, PECK, District Judge, and DRUFFEL, Senior District Judge.

PER CURIAM. In this action, presented to a three-judge court pursuant to the provisions of Title 28, U.S.C., Sections 1336, 1398, 2284 and 2321-25, plaintiffs seek an order setting aside and enjoining an order of the Interstate Commerce Commission. The case was submitted to the Court on the record of the proceedings before the Commission including the testimony and exhibits and on oral arguments of counsel and briefs. It is conceded by all parties that the case is properly before this Court and that no jurisdictional problem exists.

The order here complained of was entered by the Interstate Commerce Commission (hereinafter referred to as the Commission) under its docket No. 33535, *Institute of Scrap Iron and Steel, Inc., et al.* v. *Akron, Canton and Youngstown Railroad Co., et al.*, 316 I.C.C. 55. Therein the Commission held the present rail rates on scrap iron and steel between points in Official Rate Territory not to be unjust and unreasonable and as not resulting in undue preference or prejudice in violation of applicable law. (49 U.S.C. § 1 (5); 49 U.S.C. § 3 (1)).

Upon the record before us it has been concluded that the Commission's conclusions that the assailed rates had not been shown to be unjust, unreasonable or otherwise unlawful are based upon adequate findings supported by substantial evidence, and that they are neither arbitrary

nor unreasonable, and that there is a rational basis for the Commission's said conclusions.

Counsel for the parties have expended a substantial amount of time and energy debating whether or not a "typographical error" appeared in the Answers of the defendants and intervening defendants. This resulted from the appearance therein of the word "admit" in a context where its literal reading would require the entering of a final order for the plaintiffs as a matter of law. Defendants have steadfastly maintained that the word intended to be used was "deny," but for reasons best known to themselves they have never sought leave to amend by substituting the latter word for the former. However, such literal reading would be entirely inconsistent with the positions adopted by all parties throughout these proceedings, and a setting aside of the Commission's order on this highly technical ground would be both unrealistic and manifestly unjust. Accordingly, defendants and the intervening defendants are granted leave to amend their answers by interlineation by substituting the word "deny" for the word "admit."

Plaintiffs have complained at length that they were denied a fair hearing and due process of law by reason of the limitation placed on their cross-examination of certain witnesses by the Commission. However, a thorough review of the record in this case wherein the burden of showing impropriety in the Commission's conclusion is upon the plaintiffs, considered in the light of plaintiffs' arguments, does not bear this out. The plaintiffs did not see fit to recall the witnesses in question on direct examination as their own witnesses and make proffers. In any event, the areas of inquiry which were closed to plaintiffs by the restrictions complained of could not have produced evidence inconsistent with the Commission's determinations.

The other contentions and alleged errors enumerated by plaintiffs are not felt to here require individual discussion.

An order may be entered granting defendants leave to amend their answers by interlineation as hereinbefore provided and dismissing the Complaint.

/s/ PAUL C. WEICK
U. S. Circuit Judge
/s/ JOHN W. PECK
U. S. District Judge
/s/ JOHN H. DRUFFEL
Senior U. S. District Judge

APPENDIX B

(CAPTION OMITTED)

ORDER

(Entered May 8, 1963.)

The above cause came on for hearing before the Court and was duly submitted for consideration and decision, and the Court having made and filed its opinion. Now, therefore, pursuant thereto, it is hereby

ORDERED AND ADJUDGED, that defendants' answers are amended by interlineation and the plaintiffs' complaint be and the same is hereby dismissed.

Dated at Cincinnati this 8 day of May, 1963.

/s/ PAUL C. WEICK
U. S. Circuit Judge
/s/ JOHN W. PECK
U. S. District Judge
/s/ JOHN H. DRUFFEL
Senior U. S. District Judge

APPENDIX C

Section 1 (4) and (5) of the Interstate Commerce Act, 49 U.S.C. 1(4) and (5) provides:

Duty to furnish transportation and establish through routes; division of joint rates

(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Just and reasonable charges

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Section 3 (1) of the Interstate Commerce Act, 49 U.S.C. 3 (1) provides:

Undue preferences or prejudices prohibited

(1) It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 7 (c) of the Administrative Procedure Act, 5 U.S.C. 1006 (c) provides:

(c) Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applica-

tions for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

APPENDIX D

LIST OF PLAINTIFF-APPELLANTS

B. Abrams & Sons, Inc.
Academy Iron & Metal Co.
Ace Iron & Metal Co.
Ace Steel Baling Inc.
Acme Scrap Iron & Metal Co.
Frank Adams & Co.
M. N. Adelson & Sons Inc.
Simon Adelson Co.
The Akron Scrap Iron Co.
Albert Bros.
I. Alderman & Sons Inc.
S. Allen & Son Inc.
Allied Iron & Steel Co.
Alma Iron & Metal Co.
Alpert Iron Co.
Alport Scrap & Salvage Co.
Amper Iron & Metal Co.
Annadale Scrap Co.
Arrow Steel & Supply Co., Inc.
Ashland Iron & Steel Co.
Ashland Scrap Materials Co.
Ashtabula Salvage Co.
Assad Iron & Metal Co.
Atlas Iron & Metal Corp.
Atlas Scrap Iron & Metal Co.
The Atlas Steel & Supply Co.
Attonito Co. Inc.

Babcock Iron & Metal Co.
Baker Iron & Metal Co.
Herman Banks Iron Yard
Barnett-Friedman Co.
The I. A. Barnett Co.
Sam A. Barnett Metal Co. Inc.
Beatrice Iron & Metal Co.
Joseph Behr & Sons
Joseph Behr & Sons, Inc.
Bengart-Memel & Co.
Bennie Cotton Inc.
Berg Bros. Co.
J. Berman & Sons Inc.
H. Bixon & Sons
N. Block & Co.
Blumberg & Nicholson
A. Blumberg & Son Inc.
L. Blumberg's Son, Inc.
Book Metals Corp.
A. Borinstein
The Boston Metals Co.

Brandywine Iron & Metal Co. Reg.
Bremen Iron & Metal Co.
A. Brenner & Co.
Briggs & Turivas Inc.
Brockton Iron & Steel Co.
Brodsky & Co.
Bronx Iron & Metals Corp.
Joe Brown & Sons
Buff & Buff, Inc.
Buffalo Sash Weight & Foundry Co., Inc.
The Buncher Co.
The Burstein Co.
The By-Product Iron & Steel Corp.

C. & R. Waste Materials Co. Inc.
Frank Calandra, Inc.
Harry L. Calig Co.
The Central Iron & Metal Co.
Central Iron & Metal Co.
Central Iron & Metal Co. Inc.
Chapin & Fagin Inc.
Charleroi Scrap Iron Co.
Chicago Metals Co.
Chillicothe Iron & Metal
City Scrap & Salvage Co.
Coatesville Scrap Iron & Metal Co. Inc.
Coeburn Produce Co.
Cohen Bros.
Cohen Bros. Inc.
Julian C. Cohen & Co. Inc.
Louis Cohen & Son
The M. Cohen & Son Co.
R. Cohen & Son
Cohn Bros. Inc.
Cometals, Inc.
Commercial Iron & Metal Co.
Consolidated Mill Supply Co.
A. Cooper Metal Co. Inc.
Cousins Iron & Metal Co.
The Joseph P. Crowley Co.

Daniels & Miller
Davis Iron & Metal, Inc.
The Deitch Co.
Delawanna Iron & Metal Co. Inc.
Detroit Scrap Metals Co.
Diamond Scrap Yards Inc.
Duberstein Iron & Metal Co. Inc.
Down River Scrap Iron & Metal Co.
Dumes Inc.
Dumes Salvage Co. Inc.
Duquesne Iron & Steel Co. Inc.

Eastern Scrap & Salvage Corp.
Eastern States Steel Products Corp.

A. Edelstein & Son
H. Eichelbaum & Co.
A. Eisner & Co.
Elkhart Metals Co.

Falender Iron & Metal Corp.
Fealk Scrap Iron Co.
Feldstein Iron & Metal Co.
Fell Iron & Metal Inc.
Ferrous Steel Corp.
Fisher Steel & Supply Co.
Arthur Fivenson Iron & Metal Co.
Flint Scrap Iron & Metal Co.
Louis Frank & Sons
Frankel Co. Inc.
Franklin Auto Parts
Franklin Iron & Metal Co. Inc.
David Freedman, Inc.
I. Friedman
William Frost Co. Inc.

Garbose Metal Co.
Samuel Garbowitz & Son Inc.
S. Gaudiano & Bros.
General Iron Industries
Genesee Scrap & Tin Baling Co. Inc.
Geneva Iron & Metal Co.
Giordano Waste Material Co. (Camden, N.J.)
Giordano Waste Material Co. (Trenton, N.J.)
Glazer Scrap Co.
Glick Iron & Metal Co.
Goldberg Iron & Steel Co.
T. M. Goldstan
H. Gordon, Inc.
L. Gordon Iron & Metal Co. Inc.
Samuel Gordon & Sons Inc.
Gordon Waste Co. Inc.
Graff Bros. Scrap Iron & Metal Co. Inc.
Reuben R. Graff Co.
Gratiot Metals Co.
P. J. Greco Sons, Inc.
Samuel Greenfield Co.
J. Grossman & Son Inc.
Grund, Inc.

H. D. Metal Co.
Handler Sons Compressed Steel Corp.
Hanover Junk Co.
Harcon Corp.
Benjamin Harris & Co.
Harris Fiestal & Son
The Louis G. Hehman Co.
Hendricks Sales Co.
G. I. Hertel
H. Hirschfield Sons Co.
Holub Iron & Steel Co.
Home City Iron & Metal Co.
Hopewell Iron & Steel Co.
Charles Horewitz Sons
Hudson Iron & Metal Co.

Imperial Smelting Corp.
Independent Iron & Metal Corp.
Independent Scrap Iron & Metal Corp.
Indiana Rolling Mill Baling Corp.
Industrial Salvage Corp.
Industrial Service & Salvage Corp.
Inland Metal Refining Co.
International Scrap Iron & Metal Co. Inc.
Inter-State Steel Co.
Iron & Metal Products Co.
Iroquois Steel & Iron Co.
Abraham Isaac & Sons Co.

Jackson Iron & Metal Co. Inc.
Jakob & Seligmann Inc.
Jones Iron & Metal Co.
Louis Joseph Co. Inc.

The Kaiser-Nelson Steel & Salvage Corp.
H. Kasden & Sons Inc.
Kasle Bros. Inc.
Kasle Steel Compressing Co.
The Kasle Iron & Metal Co.
D. Katz & Sons Inc.
Kent Salvage Co.
The Samuel G. Keywell Co. Inc.
Charles J. King Inc.
H. Klaff & Co. Inc.
The Klein Co.
Klotz Bros.
Kopelove Iron & Metal Co. Inc.
Kramer-Orloff Co.
Joe Krentzman & Son
The Joseph Kroot Co. Inc.
Wm. Kugler & Bro. Inc.
The Kulka Steel & Equipment Co.

Lafayette Compressed Steel Corp.
Lancaster Iron & Metal Co.
P. Lansky & Sons
Laro Coal & Iron Co.
L. Lavetan & Sons
Lebanon Iron & Metal Co.
The Lederer Iron & Steel Co.
E. Lenick & Co.
Lernor Iron & Metal Co. Inc.
Levin & Sons, Inc. and Ft. Wayne Scrap Baling & Steel Supply, Inc.
Max Levine & Co.
B. Levy Metals
Liberty Iron & Metal Co.
Liberty Scrap Metals, Inc.
Samuel J. Liftig Inc.
Linver-Kripke — Div. Wabash Scrap Material Co. Inc.

Livingston & Co.
The Luntz Iron & Steel Co.
Luria Bros. & Co. Inc.
Lynchburg Iron & Metal Co.

McCabe Scrap Iron & Materials Co.
McMahon Iron & Metal Co.
Magen Iron & Steel Co.
Magnetic Engineering & Mfg. Co.
H. R. Mandel Co. Inc.
Mansfield Steel & Supply Co.
Marco Iron & Supply Co.
Marshall Railway Equipment Corp.
A. W. Martin Inc.
Martin Bros. Mill & Foundry Supply Co.
Martinsville Scrap Iron & Metal Co.
Maryland Pipe & Metals Co.
Mason City Iron & Metal Co.
Mason Iron & Metal Co.
Matlow Corp.
The Mendlin Co.
Merchants Steel & Supply Co. Chicago Real Estate Board Bldg.
Mervis Iron & Metal Co.
Wm. Mervis & Sons
Metal Reclaiming Co.
Metropolitan Metals, Inc.
Michigan Scrap Co.
Mid City Scrap Iron & Salvage Co. Inc.
Midland Iron & Steel Corp.
Midvale Iron & Supply Co.
Miller Junk & Waste Co.
The Mindlin Co.
Minkin Salvage Co.
Monongahela Iron & Metal Co. Inc.
The Monumental Iron & Metal Co.
Morrisville Scrap Processing Co.
Moskowitz Bros.
Muskingum Iron & Metal Co.

Naproano Iron & Metal Co.
The National Iron & Metal Co.
B. L. Nickelson Iron & Metal Co. Inc.
Norfolk Iron & Metal Co.
North American Waste, Inc.
North Hudson Scrap Iron Corp.
Norwich Iron & Metal Co.
Nover, Morris Iron Co.

Otis-Oakley Iron & Supply Co.
Owosso Iron & Metal Co.
The Oxman Steel Corp.

Pear & Co. Inc.
Peck Iron & Metal Co. Inc.
Penn Iron & Metal Co.
Pennsylvania Wood & Iron Co. Inc.
Peoples Iron & Metal Co.
Pfister Auto Wreckers Inc.
Pielet Bros. Scrap Iron & Metal Inc.
Platnick Bros.
Jacob Plavin & Sons
D. Pollack & Sons Inc.
Mayer Pollack
Price Iron & Steel Co.
Public Iron & Metal Co. Inc.
The Purdy Co.

R & R Salvage Inc.
R & R Scrap Metal Co. Inc.
R & S Bailis Corp.
Sid Rancer Iron & Steel Co. Inc.
Myer Raphael & Sons, Inc.
Lewis Raphaelson & Son
Raw Materials Inc.
William Reisner Corp.
Republic Iron & Metal Co.
I. Richman & Co. Inc.
Riesberg's Iron & Metal Co.
Riverside Iron & Metal Co.
Riverside Iron & Steel Co.
Roanoke Scrap Iron & Metal Co. Inc.
Rochester Smelting & Refining Co. Inc.
Ross Auto Parts, Inc.
A. Rubenstein & Sons
Rubin Scrap Iron & Metal Co.

Salvage Agency
Sam's Iron & Metal Co., Inc.
Michael Schiavone & Sons, Inc.
Schiavone-Bonomo Corp.
Schlafer Iron & Steel Co.
E. Schneider & Sons
Schwartz
Samuel Schwartz Sons
The Scovill Iron & Metal Co.
Scrap Iron Baling Corp.
Seaboard Salvage Co.
Security Alloys Co.
H. Shakespeare & Sons
Shamokin Iron & Metal Co.
B. Shapiro & Co. Inc.
E. Slivken Co.
Silbey Iron & Metal Co.
Silverstein Iron & Metal Co.
Simon Iron & Steel Corp.
Sinow & Weinman
Sitkin's Junk Co. Inc.
Joseph Smith & Sons Inc.
Snyder Iron & Steel Co.
I. W. Solomon Co.
J. Solotken & Co. Inc.
Joseph Soutar Co.
South Bend Baling Co. Inc.
Southwest Steel Corp.
W. M. Spiegel Sons

Square Deal Junk Dealers Inc.
Staiman Brothers
Stainless Alloy Corp. of America
The State Metals & Steel Co. Inc.
M. J. Stavola & Co.
Steel City Iron & Metal Inc.
Joseph Stern Co.
Max Stern
Suisman & Blumenthal
William F. Sullivan & Co.
Summer & Co.
Superior Iron & Metal Co. Inc.
L. Surath & Sons
Swartz & Co.

Three Rivers Iron & Metal Co.
Morris Tick Co.
Trojan Scrap Iron Corp.
Troy Iron & Metal Co.
Tube City Iron & Metal Co.
The Twin City Iron & Metal Co.

United Iron & Metal Co.
United Iron & Metal Co. Inc.
Louis Usdin Co. Inc.

Valley Iron & Steel Co. Inc.
Hyman Viener & Sons

Wallace Steel & Supply Co.
Warren Iron & Metal Co.
Warren Scrap Iron & Metal Co.
Washington Iron & Metal Co. Inc.
Isaac Weiner, Inc.
M. Weingold & Co.
J. Weissman & Sons, Inc.
The Wellman Eng. Co.
West End Auto Wrecking
Chas. J. Whelden Co. Inc.
Wilkof Steel & Supply Co.
Wilmington Iron & Metal Co.
S. Wolkoff & Sons
Worley Steel & Supply Co.

M. A. Young & Co.
Ypsilanti Iron & Metal Co.

Zaslawsky Iron & Metal Co.
Zuckerman Co.

APPENDIX E

Rule 1.75 of the General Rules of Practice of the Interstate Commerce Commission provides:

Evidence; admissibility generally. Any evidence which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

Rule 1.77 of the General Rules of Practice of the Interstate Commerce Commission provides:

Evidence; prepared statements. With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expression of his opinion prepared by him, or written answers to interrogatories of counsel, or a prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement shall not include argument; that before any such statement is read, or admitted in evidence the witness shall deliver to the officer, the reporter, and to opposing counsel as may be directed by the officer, a copy of such statement or of such interrogatories and his written answers thereto; and that the admissibility of the evidence contained in such statement shall be subject to the same rules as if such testimony were produced in the usual manner, including the right of cross-examination of the witness. Such approval ordinarily will be denied when in the opinion of the officer the memory or demeanor of the witness may be of importance.